

Arkansas Burial Association Board
Rules Committee Meeting
Tobacco Settlement Commission
101 East Capitol Ave, Suite 108
Little Rock, AR 72201
Wednesday, April 9, 2014

Rule committee members present were: Normal Gilchrest, Steve Ballard, Kat Hodge, Board Counsel, Amy Goode, Executive Secretary, and Bob Brooke, Auditor. Rule committee members absent were: Melanie Heath Posey. Other participants included: Representative Jeff Wardlaw, Richard Myhand, Robert Eichelberger, Courtney Crouch, Guy Dillahunty and Jackie Harris, Attorney for Drew County.

The committee opened up discussion with the changes that were applied from the last meeting. The Executive Secretary added the language that the public meeting would have to be noticed in the paper. This was added under section 35.8.1.a

- a) Proof that the Notice of Dissolution was published in the local paper having general circulation in the city and/or county in which the association is located. That the notice was published at least two weeks prior to the date of the public meeting of the said association and not less than one week prior to the meeting.

Courtney Crouch stated that this rule as written is fatally flawed. That this could be the end of all burial associations and the end of the Board employees. Mr. Harris inquired why he thought it was fatally flawed. Mr. Crouch replied that they should go expand the benefit by going to the legislature; explain to them that you have burial associations that are over funded. That we would like for them to be able to take that accumulation and pay them out on claims. That is why burial associations were formed. Mr. Harris did not believe that made it fatally flawed. Mr. Crouch stated that he has spoken with several burial associations and there is not the institutional knowledge in this draft. Mr. Harris stated he had a tendency to disagree, because they have spoken with just as many to try and draft this regulation. There will still be that public comment period and the legislature can continue to shape it.

Ms. Hodge stated that we needed to get back to the task the committee had at hand and that was to clarify the items the chairman gave us at the last meeting. We are talking about the notice and whether there needs to some other notice provision concerning the proxy voting.

Representative Wardlaw inquired if they have these meetings to dissolve these associations and only thirty (30) people show up and there is 2000 members. The secretary-treasurer has the proxy and they vote to dissolve 2000 – 0, because the thirty show up and the secretary-

treasurer has the remaining votes. How do the members know what's going on other than the notice in the paper or this letter that we don't know was received? Is there way we can require a minimum number to show up to these meetings to be sure these members get a fair chance in dissolving or not dissolving? Hodge stated the committee had discussed this in previous meetings and we do feel there should be a majority. Currently, the language is a majority attending the meeting, but the committee can reconsider and feels that it should be reconsidered.

Representative Wardlaw if the reason for dissolving is to upgrade their benefit, is there not a mechanism in place to allow them to do so through the Burial Board. Currently, there is no law or rule that would allow that in the Burial regulations. Ballard stated the option would be insurance.

Harris stated that it wasn't that the members wanted to increase their benefit. They are just old and tired of dealing with the association. They wanted to be able to get out of it what they have put into and walk away. Burial Associations are not gaining membership at the rate they did back when burial associations were thriving. The cost of funerals is over and above the maximum benefit of \$2,500.00.

It was voiced that the current members were not the ones who contributed the amount of funds that had accumulated.

Rule 2. Owner of Funds. Since burial associations are non-profit mutual benefit societies, all assessments, dues, and/or other funds of whatever kind or character, collected or received by them over and above necessary expenses (which in no event may exceed twenty-five percent (25%) of its receipts for any given period) shall be and remain the property of the association for use and benefit of its members only. (Amendment by Act 360 of 1981).

Hodge stated that our statute 23-78-109 states all burial associations organized or operating in the State of Arkansas shall be under the authority, supervision, and control of the Burial Association Board. Hodge believes that the Board does authority to set-up a rule in the context of a dissolution that requires that a percentage of members be required to participate. Statute 23-78-115 states that all burial associations shall have and maintain rules and bylaws in such form and with such contents as shall as prescribed by the Burial Association Board.

We need to fine tune proxy. The by-laws currently state that the secretary-treasurer would have the proxy of all members that are absent or do not send in their proxy vote. So the question is if we need an affirmative action or something different. The members would have to sign over their proxy.

Mr. Crouch stated in the corporate world 51% of the shareholders have to be represented either in person or by proxy. How you go about representing them by proxy is present to them what you are discussing. What you're saying is you send out a proxy that is either for or against; if you don't have 51% come in for or against, then your secretary-treasurer votes the other proxy either for or against. So you are actually discussing two proxies. Hodge stated that the notice will explain the reason for the vote that if the member doesn't want to vote by proxy then they need to attend the meeting. The committee is saying we have to have 51% of those participating either in favor or against the dissolution.

A trust fund is also going to have to be set-up and administered by this Board or by another alternative form of trust that the Board approves.

There was lots of discussion, but finally the committee agreed that the following would be added to the rule in 35.8.1 a b) Affirmative Proxy required by demonstrating the following:

1. Approval of the dissolution shall be by majority of those actually participating either in person or via proxy which shall be no less than twenty-six percent (26%).
2. The Secretary-Treasurer shall exercise no more than twenty-five percent (25%) of the remaining votes of the membership not exercised via affirmative proxy.

35.8.5.1 The committee had discussion whether those opting out would get there full face amount of the policy no matter where they have their funeral serviced. Or would they only get the premiums they paid in? If an association agrees to accept a member and they have two hundred (\$200) dollars in premiums and they die a year later they shall still receive the full five hundred (\$500) dollars. The two year waiting period should not apply since they have already met that requirement. Only to the extent if the member has only been a member for six months then there is still contestable time left. It was stated that the pro-rata share should be transferred to the association of mutual agreement. This is the rule the committee agreed upon. **35.8.5.1** If the holder of a membership certificate in a burial association desires to continue their membership in a burial association governed by Arkansas law, he or she may, within sixty (60) days, return the Dissolution Notice and request that he or she "opt out" of receiving a pro rata share of the remaining burial association assets and receive a full refund of the amount of the premiums paid into the burial association of which they are a member in good standing.

1. The holder of a membership certificate shall also designate the name of the burial association to which said refund of premiums shall be directed.
2. Nothing in this rule shall prohibit a member from using the servicing firm of the dissolved Association if they so choose and receiving face value of their original certificate.

3 Members transferring into an association of mutual agreement shall also receive face value of their certificate at the time of acceptance.

4. Additionally, members that have not met the twenty-four (24) month waiting period will be required to fulfill that obligation with the assuming association.

In section 35.8.7 the committee added language to reflect the costs associated with the dissolution referenced in 35.8.3 a)

The following statements were read into the record by the Executive Secretary:

To: Arkansas Burial Board Rules Committee

Subject: Objection to proposed Liquidation of Burial Associations

The dissolving of burial associations should be rejected as in the past for the following reasons:

1. The proposal produces taxable income to the recipients and requires the issue of 1099.
2. The payment of attorney's fees with burial association funds is not provided by law.
3. The payment to officers of a burial association is not provided by law and is in direct violation of IRS 501 C regulations.
4. Payment of commissions to life insurance agents with burial association funds is not permitted by law.

To allow dissolution will burden burial policy holders and provide undue hardship on said policy holders.

A better and more workable plan is to allow the burial association to pay a higher benefit with excess funds. The benefit of such payments is that the money would go to the policyholders and not lawyers, officers and insurance agents. Under current regulations association now pay out more of the face amount; face amount plus prepaid premiums. Association can only write \$2,500.00 benefits. By Board action the association with excess reserves could make a payment that is higher than the face amount.

100% of the excess reserve would go to the policy holders who by law are entitled to the funds.

Sincerely,

John B. Frazer, Jr, President
Frazer's Burial Association

Amy,

I regretfully cannot attend today's rules committee meeting due to the fact that I have two funerals involving families that I am extremely close to. I would however, like to submit this in writing to become part of the record. To state that I have great concern about this dissolution rule would be a gross understatement. My concerns/questions are as follows:

1. This rule as drafted will be the beginning of the end of burial associations. It occurs to me that this rule was drafted without any institutional knowledge or input. Why? Burial associations have been in existence for over 80 years, total more than 130 burial associations and insure between 300,000-400,000 individuals. This rule will have a far reaching effect and will be the first step in destroying burial associations as we know them. Even though there may not be many super-funded associations, there will definitely be more dissolutions to follow, if passed. There has never been a burial association dissolution and there is a reason for it. The last time the rule was brought before the board for a vote, it was unanimously defeated. Why?
2. As discussed in the last meeting, the rule will result in taxable income to policy holders which will bring grave issues to those on SSI.
3. The payment of attorney fees and fees to officers is simply wrong. Every penny of the excess reserve should rightfully go to the policy holders. The right thing to do would be to enhance the benefits to the members of the burial association. After all, it is their money. As drafted, this rule also has no limits on fees, expenses or other costs that would be associated with the dissolution. Why?
4. Why would we vote to dissolve any association and thereby reduce our fee income when we are already having cash flow issues?

I was appointed to this state board to represent and protect the policy holders of all burial associations, not a special interest. After visiting with many experienced funeral home operators, burial association operators and former board members, I have found very few that are in support of this. There are entirely too many flaws, questions and concerns in this rule, especially this late in the game. For the record, I am totally against the dissolution rule as presented. Thank you for allowing me to express myself via email and again, I'm sorry I could not attend.

Chuck Dearman

Stephenson-Dearman Funeral Home, Inc.

Mr. Harris stated in response to the letters that he was sorry they were unable to attend, but the reality is that if the people don't support in this in their particular association they won't approve it. Ballard stated that if it will not benefit the members the Board will not approve it.

The meeting was then adjourned.